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Philips Electronics North America Corporation*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION

Case No. 07-5944 SC
MDL No. 1917

This Document Relates to:

Case No. C 11-6397 SC
COSTCO WHOLESALE CORPORATION,
Plaintiff,

v.

HITACHI, LTD., et al.,
Defendants,

**DECLARATION OF CHARLES M.
MALAISE IN SUPPORT OF THE
PHILIPS DEFENDANTS' REPLY
MEMORANDUM IN SUPPORT OF
MOTION TO COMPEL ARBITRATION**

1 I, Charles M. Malaise, hereby declare as follows:

2 1. I am an associate with the law firm of Baker Botts L.L.P., counsel for Defendants
3 Koninklijke Philips N.V. and Philips Electronics North America Corporation (collectively, the
4 “Philips Defendants”). I make this declaration in support of the Philips Defendants’ Reply
5 Memorandum in Support of their Motion to Compel Arbitration.

6 2. I have personal knowledge of the facts set forth herein and, if called upon, could and
7 would competently testify thereto under oath.

8 3. On May 15, 2012, Philips Electronics North America Corporation and Toshiba
9 America Electronic Components, Inc. served upon Costco Wholesale Corporation thirty-five
10 different requests for production. On the same day, various other defendants served nearly identical
11 requests for production on the following direct action plaintiffs: ABC Appliance, Inc. d/b/a/ ABC
12 Warehouse, the Best Buy Plaintiffs, Circuit City Trust, Compucom Systems, Inc., the Electrograph
13 Plaintiffs, Interbond Corporation of America, Kmart Corp., Marta Cooperative of America, Inc.,
14 Office Depot, Inc., P.C. Richard & Son Long Island Corporation, Schultze Agency Services, LLC.,
15 Sears, Roebuck and Co., and Target Corp.

16 4. On May 15, 2012, Philips Electronics North America Corporation and Toshiba
17 America Electronic Components, Inc. served upon Costco Wholesale Corporation ten different
18 interrogatories. On the same day, various other defendants served nearly identical interrogatories on
19 the following direct action plaintiffs: ABC Appliance, Inc. d/b/a/ ABC Warehouse, the Best Buy
20 Plaintiffs, Circuit City Trust, Compucom Systems, Inc., the Electrograph Plaintiffs, Interbond
21 Corporation of America, Kmart Corp., Marta Cooperative of America, Inc., Office Depot, Inc., P.C.
22 Richard & Son Long Island Corporation, Schultze Agency Services, LLC, Sears, Roebuck and Co.,
23 and Target Corp.

24 5. On May 15, 2012, Tatung Company of America, Inc. and Samsung Electronics Co.
25 Ltd.’s served upon Costco Wholesale Corporation fifteen different interrogatories. On the same day,
26 various other defendants served nearly identical interrogatories on the following direct action
27 plaintiffs: ABC Appliance, Inc. d/b/a/ ABC Warehouse, the Best Buy Plaintiffs, Circuit City Trust,
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1 Compucom Systems, Inc., the Electrograph Plaintiffs, Interbond Corporation of America, Kmart
2 Corp., Marta Cooperative of America, Inc., Office Depot, Inc., P.C. Richard & Son Long Island
3 Corporation, Schultze Agency Services, LLC, Sears, Roebuck and Co., and Target Corp.

4 6. On August 17, 2012 and in response to the thirty-five requests for production and
5 twenty-five interrogatories, Costco Wholesale Corporation only reproduced the data it previously
6 submitted to the Indirect Purchaser Plaintiffs' third-party subpoena in 2009.

7 7. On August 24, 2012, the Toshiba Defendants filed a Motion to Compel Arbitration
8 against Costco Wholesale Corporation. After reviewing this motion, the Philips Defendants
9 conducted a search for all agreements that governed the sale of CRT Products. Despite this search,
10 the Philips Defendants did not locate any document that governed the sale of CRT Products between
11 the Philips Defendants and Costco Wholesale Corporation.

12 8. On December 7, 2012, Geoffrey Shavey was deposed as the Costco Wholesale
13 Corporation's Rule 30(b)(6) witness. After this deposition, the Philips Defendants again conducted
14 a search for all agreements that governed the sale of CRT Products to Costco Wholesale
15 Corporation. Despite this search, the Philips Defendants did not locate any such documents.

16 9. On January 10, 2013, Philips Electronics North America Corporation requested that
17 Costco Wholesale Corporation immediately search for and produce all vendor agreements, or any
18 other agreements containing an arbitration provision that Costco Wholesale Corporation had in place
19 with any defendant relating to the purchase of CRT Products during the 1995-2007 time period.

20 10. On February 11, 2013, Costco Wholesale Corporation produced vendor agreements
21 with the bates range of CostcoCRT_000000001-230. Other than these two hundred and thirty pages
22 of documents, Costco Wholesale Corporation has not produced any other material information in
23 response to the thirty-five requests for production and twenty-five interrogatories.

24 11. Attached as Exhibit A to this declaration is a true and correct copy of excerpts of
25 Koninklijke Philips Electronics N.V.'s Form 20-F for the fiscal year ended December 31, 2008,
26 which is available at [http://www.sec.gov/Archives/edgar/data/313216/000115697309000099/](http://www.sec.gov/Archives/edgar/data/313216/000115697309000099/u06127e20vf.htm)
27 [u06127e20vf.htm](http://www.sec.gov/Archives/edgar/data/313216/000115697309000099/u06127e20vf.htm) (viewed on November 11, 2013).

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct.

3 Executed this 13th day of November, 2013, in Washington, D.C.

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A handwritten signature in black ink, appearing to read "Charles M. Malaise", written in a cursive style.

Charles M. Malaise